

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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	:	
ABBOTT LABORATORIES,	:	
	:	
Plaintiff,	:	
	:	18 Civ. 8468 (LGS)
-against-	:	19 Civ. 600 (LGS)
	:	
NANCY FEINBERG et al.,	:	<u>ORDER</u>
	:	
Defendants.	:	
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LORNA G. SCHOFIELD, District Judge:

WHEREAS, each party has submitted their evidentiary objections to the opposing party's trial exhibits (Dkt. No. 160). Accordingly, it is hereby

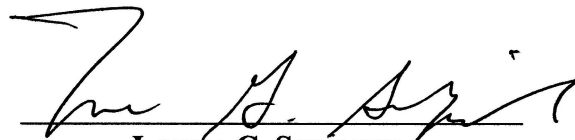
**ORDERED** that the following preliminary rulings are made with respect to the parties' contested trial exhibits:

- (1) Documents subject to a hearsay objection, as to which no hearsay exception is offered, are excluded if offered for the truth of the matter asserted. *See* Fed. R. Evid. 802; *e.g.*, DX 5, DX 137, DX 143.
- (2) Documents subject to a hearsay objection but not subject to any authenticity objection, and prepared before January 1, 1992, are admissible under the hearsay exception for ancient documents. *See* Fed. R. Evid. 803(16); *e.g.*, DX 78, DX 140, DX 95, DX 97, DX 175, DX 177, PX 1, PX 2, PX 15, PX 17-19, PX 27, PX 29, PX 66 and PX 67. However, within such ancient document or other admissible document, any statement (implicitly or explicitly) by someone other than the preparer of the document that is offered for the truth of the matter asserted is excluded unless subject to another hearsay exception. *See* Fed. R. Evid. 805; *e.g.*, DX 78, DX 140,

DX 95, DX 97, DX 160, DX 175, DX 177, PX 66, PX 67, PX 31, PX 81, PX 87, PX 89 and PX 93.

- (3) Documents that appear to be offered not for the truth of the matter asserted are not hearsay and are not excludable on that basis. *See* Fed. R. Evid. 801(c); *e.g.*, DX 50 (showing offer & recommendation), DX 93 (showing offer and acceptance), DX 95 (showing filing and nature of allegations) and DX 177 (showing offer & price).
- (4) Documents that are not authenticated and are subject to authenticity objections are excluded. *E.g.*, DX 54 and DX 69.
- (5) PX 13 may be admitted, as Defendants' objection to the notation goes to the weight of that evidence, not its admissibility.
- (6) The Court makes no ruling, preliminary or final, on the admissibility of DX 51, DX 85, DX 91, DX 96 and DX 121 and reserves its ruling on the admissibility of these exhibits until during or after trial.

Dated: November 5, 2020  
New York, New York



**LORNA G. SCHOFIELD**  
**UNITED STATES DISTRICT JUDGE**